THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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WRIT PETITION NO : 25926 of 2005

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Dated: 06.12.2005

Between:

N. Rama Sastry, S/o. N. Reddeppa,
SV Grameena Bank, Kandukur Branch,
Chittoor District.

..... PETITIONER

AND

The General Manager-cum-Disciplinary Authority,
Sri Venkateswara Grameena Bank, Chittoor and another.

.....RESPONDENTS

ORDER:

The petitioner is employed as a Clerk-cum-Cashier in the Kandukur Branch of Sri Venkateswara Grameena Bank, Chittoor District. He was placed under suspension and disciplinary proceedings were initiated against him on the ground that there was discrepancy as to the cash balance, when verified on 07.04.2005. The second respondent was appointed as an enquiry officer. The enquiry is in progress.

The petitioner contends that since the inception of the enquiry, the second

respondent is not acting in fair and impartial manner. It is stated that though the management itself submitted the list of two witnesses, namely, Mr. D.Khader Basha, Branch Manager, and Mr.P.Jagannatha Sastry, Chief Inspector, the second respondent did not insist on examination of the second witness. A further contention is made to the effect that on 26.11.2005, the examination of M.W.1 was completed, and on the same day the second respondent insisted that the petitioner must produce his witnesses and closed the enquiry, without giving an opportunity to him. This writ petition is filed, assailing the proceedings dated 26.11.2005. A further prayer is made to the effect that the second respondent be replaced.

Heard Sri V.Jagapathi, the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

Sri.K.Srinivasa Murthy, learned Standing Counsel for the respondents, has obtained instructions and made submissions enabling the Court to dispose of the writ petition at the admission stage.

In the course of the departmental enquiry against the petitioner, M.W.1 was examined and it was concluded only on 26.11.2005. From a perusal of the list of witnesses and the documents, filed by the Bank, it is evident that two witnesses were named and eight documents were identified. The second respondent did not state any reason as to why the other witness by name Sri Jagannatha Sastry was not examined at all.

In the departmental enquiry, the delinquent-employee would formulate the course of action to be adopted by him, based on the nature of presentation to be made on behalf of the management. If a particular witness is named by the management, the employee may not feel the necessity of examining some other witnesses, because of the reason that he may be confident of eliciting necessary information from the management witness himself. Though it is in the discretion of the management to give up or examine the witnesses named by it, the delinquent-employee cannot be taken by surprise in such cases. On the other hand, the enquiry officer must be satisfied as to the basis or ground on which the witnesses are given up. At any rate, the employee in such cases must be given adequate opportunity to examine the witnesses on his behalf. Viewed from this angle, the action of the second respondent in closing the enquiry abruptly on 26.11.2005 cannot be sustained.

Therefore, the proceedings to that extent are set aside.

Though the petitioner made a fervent request for change of Enquiry Officer, this Court is not inclined to accede to that request. The second respondent can be required to act fairly. He must insist upon the management to examine the left over witness, who is named by it earlier, or to record reasons for not examining such witness. He must also give an opportunity to the petitioner.

For the foregoing reasons, the writ petition is allowed and the proceedings dated 26.11.2002, insofar as it relates to closing the enquiry without giving an opportunity to the petitioner to adduce evidence on his behalf, is set aside. The second respondent is directed to ensure that the second witness named by the management, by name Sri Jannatha Sastry, is examined, and if the management is not willing to examine him, it shall be left open to the petitioner to examine him as his witness. Apart from that, the petitioner shall also be permitted to examine any witness within a period of two weeks from the date of recommencement of the proceedings. There shall be no order as to costs.

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06.12.2005

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